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EXAMINER

CARTAGENA, MELVIN A

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

07/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claim requires a sealing element made by a process of molding metal. The specifications describe in page 10, lines 15-19, a method of molding a sealing element from a plastic material.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 6/1, 6/5/1, 7/6/1, 7/6/5/1, 9/7/6/1, 9/7/6/5/1, 10, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,058,960 to Kopp.

Kopp shows a discharging valve as seen in Fig. 1, having a moveable closure part 14 retained in the closed position by a spring tongue 42, the spring is secured to a valve disk 12 by clamping arms 22 and a sealing disk 13, the sealing disk has a cylindrical extension and guide

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23, an elastic sealing body 19 arranged between a valve seat 21 and the sealing element 32, axially extending bores 46, see Fig. 3, .

With respect to using the dispenser for a foam material, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,058,960 to Kopp in view of US 3,348,742 to Assalit.

The Kopp shows all claimed features as discussed above but is silent about the cross section shape of the dispensing bores. Assalit shows an aerosol valve bores shaped as triangles turned upside down, see Fig. 3. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Kopp to include bores shaped as triangles turned upside down to make the flow of product progressively adjustable in proportion to the displacement of the valve as taught by Assalit, see column 2, lines 50-52.

Response to Arguments

7. Applicant's arguments filed May 13, 2009 have been fully considered but they are not persuasive. In response to applicant's argument that the device of Kopp requires additional parts

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to provide a guide for the closure part, note that the device of Kopp is provides guidance for the closure part 14 in the same manner as shown in applicant's Fig. 1.

In response to applicant's argument that the references fail to show the spring tongue attached to the valve disk by welding or closed manner, it is noted that these feature is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments with respect to claims 5-7, 9, 13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571)272-4924. The examiner can normally be reached on M-F (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754